Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No. 76-1602

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

CALIFORNIA, ex rel. DEPARTMENT OF TRANSPORTATION,	)
Petitioner,	)
v.	)
UNITED STATES OF AMERICA,	)
Respondent.	)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY AND SUPPLEMENTAL BRIEF OF CALIFORNIA

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PORTATION,

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v.

UNITED STATES OF
AMERICA,

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STATES COURT OF APPEALS
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I

In response to the memorandum of the United States in opposition to California's petition for certiorari dated July 1977, California submits the following:

1. Whether interest runs on moneys on deposit in a State condemnation action is incidental to the fundamental issues of this case, which are: whether the determination of what constitutes reimbursable "costs of construction" as such phrase is set forth in 23 U.S.C. section 101(a) is to be governed by the law of California or federal policy; whether that particular federal policy is void as being outside the intent of Congress; and whether the Secretary of the Department of Transportation, acting by and through the FHWA, has the power to make an independent review of the reasonableness of costs of construction incurred by a state. The fact that California may be in a minority of states which includes interest on security deposits in its construction costs should not detract from the importance of this case because other construction

costs may be subject to the same improper determination if this issue is not resolved.

2. If this petition is granted, PPM's 80-1 and 80-4 will be submitted to the court in their entirety and speak for themselves. Contrary to respondent's position expressed in footnote 3, page 4 of its memorandum, "reasonableness" is not a general standard established by either PPM 80-1 or 80-4 for the determination of what construction costs are to be reimbursed to the states by the United States. The standard of reasonableness is limited to the particular costs identified in PPM 80-1, paragraph 51 (Petition, Appendix F-2).

3. Respondent's memorandum in general is otherwise correct if the issues presented by petitioner are totally disregarded. It is true as stated on page 3 of the memorandum that the Federal

Government is empowered "to oppose reasonable conditions on the use of federal funds, federal property and federal privileges." Obviously, for such conditions to be reasonable, they must be within the scope of the authority of the Federal Government as outlined by Congress, and they must be subject to the application of the appropriate law. If, as petitioner contends, PPM 80-4, paragraph 31, is outside the scope of the Secretary's authority, and PPM 80-1, paragraph 3a, should control the determination of the issue, then the condition imposed by the Federal Government, based upon PPM 80-4, paragraph 31, is clearly unreasonable. In other words, the memorandum of the United States in opposition begs the questions presented by the petition.

II

Petitioner submits the following supplemental information:

1. The United States Court of Claims case No. 281-75 decided March 23, 1977, and mentioned at page 27 of California's petition is found at 551 F.2d 843.

2. The States of New York, Pennsylvania, Colorado, Virginia, Arizona, New Mexico, Tennessee and South Carolina have expressed a strong interest to petitioner in the resolution of the issues presented by California's petition.

DATED: September 28, 1977.

Respectfully Submitted,

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